IN THE COURT OF APPEALS OF THE STATE OF ALASKA

STATE OF ALASKA, Appellant, v. RANGER HARRISON FOX, Appellee.	Court of Appeals No. A-13314 Trial Court No. 3KN-18-00338 CR SUMMARY DISPOSITION No. 0183 — March 10, 2021

Appeal from the District Court, Third Judicial District, Kenai, Margaret Murphy, Judge.

Appearances: Michal Stryszak, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Kevin G. Clarkson, Attorney General, Juneau, for the Appellant. Douglas O. Moody, Assistant Public Defender, and Samantha Cherot, Public Defender, Anchorage, for the Appellee.

Before: Allard, Chief Judge, and Wollenberg and Harbison, Judges.

In March 2018, at approximately 1:20 a.m., a Soldotna police officer stopped Ranger Harrison Fox for driving fifty-seven miles per hour in a forty-five mile-per-hour zone. During the traffic stop, the officer observed that Fox had bloodshot, watery eyes. Initially, the officer did not notice any other indicia of intoxication, and he returned to his patrol car to write Fox a citation for speeding. Upon re-contacting Fox, however, the officer detected an odor of alcohol. Immediately after handing Fox the

speeding citation, the officer asked Fox if he had been drinking, and Fox admitted consuming one beer. The officer then asked Fox to perform field sobriety tests. Based on Fox's performance on the field sobriety tests, the officer arrested Fox for driving under the influence.[1]

Fox moved to suppress the evidence obtained during the traffic stop, arguing that the officer unlawfully expanded the scope of the stop by asking him if he had been drinking and asking him to perform field sobriety tests.[2] Following an evidentiary hearing, the trial court granted Fox's motion to suppress. Analogizing Fox's case to *Saucier v. State*,[3] the court reasoned that speeding "in and of itself" was not indicative of impairment, nor were bloodshot, watery eyes, or an odor of alcohol. The court thus granted Fox's motion and dismissed the driving under the influence charge.

The State now appeals, arguing that Fox's speeding, bloodshot, watery eyes, odor of alcohol, and admission to drinking, taken together and in light of the fact that the traffic stop occurred in the early morning hours,[4] were sufficient to establish reasonable suspicion that Fox was driving under the influence.

We agree with the State that the trial court erred in relying on *Saucier* to determine whether the officer had a reasonable suspicion to extend the stop in order to conduct a DUI investigation.[5] Our holding in *Saucier* concerned the quantum of

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[1] AS 28.35.030(a)(2).

[2] *See Brown v. State*, 182 P.3d 624, 625 (Alaska App. 2008) (recognizing that a police officer's conduct during a traffic stop must be reasonably related — in duration, manner, and scope — to the circumstances justifying the stop).

[3] *Saucier v. State*, 869 P.2d 483 (Alaska App. 1994).

[4] *See Hamman v. State*, 883 P.2d 994, 995 (Alaska App. 1994).

[5] *See Beltz v. State*, 221 P.3d 328, 337 (Alaska 2009) ("An officer has a reasonable (continued...)

evidence necessary to establish probable cause to arrest a driver for driving under the influence — a higher standard than the reasonable suspicion required for an officer to conduct an investigation into whether a driver is impaired.[6]

Here, Fox agrees that he was validly stopped for speeding. During the course of the stop, the officer noticed additional indicia of criminality — namely, Fox's bloodshot, watery eyes and the odor of alcohol. The trial court was required to consider the totality of these circumstances — not whether each of the officer's individual observations would have established reasonable suspicion, or probable cause, "in and of itself."[7] Under these circumstances, the officer did not unlawfully extend the stop when he asked if Fox had been drinking.[8] And once Fox admitted to drinking, the officer had reasonable suspicion to ask him to complete field sobriety tests.[9]

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[5] (...continued)
suspicion if 'the totality of the circumstances indicates that there is a substantial *possibility* that conduct giving rise to a public danger has occurred, is occurring, or is about to occur.'" (quoting *Hartman v. State, Dep't of Admin., Div. of Motor Vehicles*, 152 P.3d 1118, 1122 (Alaska 2007)) (additional citations omitted) (emphasis in original)).

[6] *Saucier*, 869 P.2d at 485-86; *see also Lum v. Koles*, 426 P.3d 1103, 1115 (Alaska 2018) (noting that reasonable suspicion requires "a substantially lower showing than the one required for probable cause").

[7] *See Beltz*, 221 P.3d at 337.

[8] *See Russell v. Anchorage*, 706 P.2d 687, 689 (Alaska App. 1985); *Aldridge v. State*, 2013 WL 3461694, at *4 (Alaska App. July 3, 2013) (unpublished) ("[P]olice conducting a lawful traffic stop may properly investigate a potential DUI if, during their contact with the driver, evidence of a DUI comes to light.").

[9] *See Romo v. Anchorage*, 697 P.2d 1065, 1069 (Alaska App. 1985) (holding that an officer had reasonable suspicion to justify a request that the defendant perform field sobriety tests, despite not observing any poor driving, when the officer smelled alcohol on the defendant and the defendant admitted drinking); *see also Anchorage v. Murdoch*, 2002 WL
(continued...)

Accordingly, we REVERSE the decision of the district court to suppress the evidence obtained during the traffic stop and to dismiss the charge against Fox.

[9] (...continued)
1022074, at *2 (Alaska App. May 22, 2002) (unpublished) (holding that reasonable suspicion existed to justify field sobriety tests despite no visible sign of intoxication when the officer smelled alcohol on the defendant and the defendant admitted drinking).